

TO AMEND THE SOLID WASTE DISPOSAL ACT TO PROVIDE THE OWNER OR OPERATOR OF A CRITICAL ENERGY RESOURCE FACILITY AN INTERIM PERMIT UNDER SUBTITLE C THAT IS SUBJECT TO FINAL APPROVAL BY THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, AND FOR OTHER PURPOSES

MARCH 23, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1070]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1070) to amend the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit under subtitle C that is subject to final approval by the Administrator of the Environmental Protection Agency, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	2
Background and Need for Legislation .....	2
Committee Action .....	4
Committee Votes .....	4
Oversight Findings and Recommendations .....	8
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	8
Congressional Budget Office Estimate .....	8
Federal Mandates Statement .....	8
Statement of General Performance Goals and Objectives .....	8
Duplication of Federal Programs .....	8
Related Committee and Subcommittee Hearings .....	8
Committee Cost Estimate .....	9
Earmark, Limited Tax Benefits, and Limited Tariff Benefits .....	9
Advisory Committee Statement .....	9
Applicability to Legislative Branch .....	9

Section-by-Section Analysis of the Legislation .....	10
Changes in Existing Law Made by the Bill, as Reported .....	10
Minority Views .....	11

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. INTERIM HAZARDOUS WASTE PERMITS.**

Section 3005(e) of the Solid Waste Disposal Act (42 U.S.C. 6925(e)) is amended—

(1) in paragraph (1)(A)—

(A) in clause (i), by striking “or” at the end;

(B) in clause (ii), by inserting “or” after “this section,”;

(C) by adding at the end the following:

“(iii) is a critical energy resource facility,”; and

(2) by adding at the end the following:

“(4) DEFINITIONS.—For the purposes of this subsection:

“(A) CRITICAL ENERGY RESOURCE.—The term ‘critical energy resource’ means, as determined by the Secretary of Energy, any energy resource—

“(i) that is essential to the energy sector and energy systems of the United States; and

“(ii) the supply chain of which is vulnerable to disruption.

“(B) CRITICAL ENERGY RESOURCE FACILITY.—The term ‘critical energy resource facility’ means a facility that processes or refines a critical energy resource.”.

**PURPOSE AND SUMMARY**

To amend the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit, under Subtitle C of such Act, that is subject to final approval by the Administrator of the Environmental Protection Agency or a State with primary enforcement responsibility.

**BACKGROUND AND NEED FOR LEGISLATION**

Between 1984 and 2018, for the global economy that was in place pre-pandemic, total tonnage output of non-fuel minerals increased more than 2.5 times (based on data from the World Mining Congress, WMC, open source).<sup>1</sup>

Testimony from a minerals expert before the Committee has highlighted, though, that the challenge is not just gross tonnage but also quality; particularly for high performance end uses and applications.<sup>2</sup> A significant hurdle is access for development, including industrial infrastructure to support mining and minerals processing.<sup>3</sup> Investments can only proceed at a pace that current critical supply chains can support—meaning the global market needs new resource centers and logistics pathways.<sup>4</sup>

According to the International Energy Agency (IEA), the supply chain for many clean energy technologies and their raw materials is more geographically concentrated than that of oil or natural gas—especially when it comes to minerals that are central to manufacturing clean energy technology equipment and infrastructure.<sup>5</sup> Not only do certain countries dominate critical minerals production, but the level of concentration is also higher for processing and refining operations—currently the U.S. does not even register when

<sup>1</sup> <https://docs.house.gov/meetings/IF/IF18/20200916/111008/HHRG-116-IF18-Wstate-MichotFossM-20200916-U1.pdf>.

<sup>2</sup> [HHRG-116-IF18-Wstate-MichotFossM-20200916-U1.pdf](https://www.house.gov/imo/docinfo/?doc_id=362444) (house.gov).

<sup>3</sup> *Ibid.*

<sup>4</sup> <https://news.rice.edu/news/2023/energy-transition-requires-new-investments-minerals-heartland>.

<sup>5</sup> <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/the-state-of-play>.

it comes to total processing of the main critical minerals.<sup>6</sup> This creates a source of concern for potential supply disruptions, manufacturing newer energy technologies, and maintaining an effective standard of living.

To rebalance global supply and strengthen the U.S. economy for the future; more domestic mineral refining capacity needs to be constructed and operating. A foreseeable need for a facility of this nature is Subtitle C permit under the Solid Waste Disposal Act—commonly referred to as the Resource Conservation and Recovery Act (RCRA)—which is a precondition to construction.

Under Subtitle C of RCRA, a mineral processing facility that generates a RCRA-regulated waste needs a permit if it does one of three things on-site: stores the waste for 90-days, treats the waste, or disposes of the waste.<sup>7</sup> Owners and operators of four types of these treatment, storage, and disposal facilities are subject to these requirements: new facilities not yet constructed; newly regulated existing facilities subject to RCRA permitting requirements for the first time; permitted facilities with newly regulated units; and interim status facilities.<sup>8</sup> This permit must be applied for 180 days before physical construction of a new facility can begin—and no type of facility can operate without a permit.<sup>9</sup>

It has been estimated that it can take 5 years for a RCRA Subtitle C permit to be issued.<sup>10</sup> According to the Business Roundtable, “[t]he slow and inefficient permitting process for energy infrastructure projects continues to discourage private sector investment, delay new projects and undermine the value of taxpayer investments.”<sup>11</sup>

RCRA section 3305(e), through the creation of an “interim” permit status, provides a pathway to investment and construction certainty; but also keeps the permittee responsible for protecting the environment. While “Interim” status does not apply to prior to construction, it is a period in which the owner or operator is treated as having been issued a RCRA Subtitle C permit by EPA or a State even though the owner or operator has not yet received a final determination.<sup>12</sup> Interim status continues until a final determination is made by EPA or a state to issue or deny the permit.<sup>13</sup>

Facility owners and operators who have interim status must comply with interim status standards set forth in 40 CFR part 265 (standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) and 40 Part 266 (standards for management of specific hazardous wastes and facilities) or with “an analogous provision” of a State program which has received interim or final authorization under 40 CFR part 271.<sup>14</sup> Facility owners and operators are not relieved from complying with other State requirements, the interim permit can be assessed by government offi-

<sup>6</sup> Ibid.

<sup>7</sup> RCRA section 3005(a)—42 U.S.C. § 6925(a).

<sup>8</sup> [https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra\\_subtitleC\\_forms\\_and\\_instructions.pdf](https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra_subtitleC_forms_and_instructions.pdf).

<sup>9</sup> Ibid.

<sup>10</sup> <https://www.era-environmental.com/blog/rcra-facts-an-overview-of-the-hazardous-waste-management-law>.

<sup>11</sup> <https://www.businessroundtable.org/policy-perspectives/smart-regulation/the-case-for-permitting-reform>.

<sup>12</sup> 40 CFR §§ 270.1(c) [https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra\\_subtitleC\\_forms\\_and\\_instructions.pdf](https://rcrapublic.epa.gov/rcrainfoweb/documents/rcra_subtitleC_forms_and_instructions.pdf).

<sup>13</sup> RCRA section 3005(e)(1).

<sup>14</sup> 40 CFR 270(c).

cials at any time for determining whether it can become more permanent, and compliance with the regulations and information requirements is necessary to maintain an interim permit. Finally, any facility that has been denied an interim permit or been denied the ability to operate cannot obtain an interim permit.<sup>15</sup>

#### COMMITTEE ACTION

On February 7, 2023, the Subcommittees on Environment, Manufacturing, and Critical Materials and Energy, Climate, and Grid Security jointly held a hearing on 17 separate pieces of legislation, including a pre-introduced “Discussion Draft” version of H.R. 1070. The Subcommittee received testimony from:

- The Honorable Mark Menezes, Former U.S. Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Environment, Manufacturing and Critical Materials met in open markup session and forwarded H.R. 1070, with amendment, to the full Committee by a record vote of 13 yeas and 6 nays. On March 9, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1070, with amendment, favorably reported to the House by a record vote of 27 yeas and 22 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

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<sup>15</sup>RCRA section 3005(e)(1).

**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE #22**

**BILL:** H.R. 1070, To amend the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit under subtitle C that is subject to final approval by the EPA Administrator.

**AMENDMENT:** An amendment offered by Rep. Tonko, No. 1.

**DISPOSITION:** **NOT AGREED TO**, by a roll call vote of 19 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess				Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson				Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters			
Rep. Palmer		X		Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster			
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán			
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meecks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE #23**

**BILL:** H.R. 1070, To amend the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit under subtitle C that is subject to final approval by the EPA Administrator.

**AMENDMENT:** An amendment offered by Rep. Pallone, No. 2.

**DISPOSITION:** **NOT AGREED TO**, by a roll call vote of 22 yeas and 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson				Rep. Clarke	X		
Rep. Walberg				Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer		X		Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis				Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

03/09/2023

**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE #24**

**BILL:** H.R. 1070, To amend the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit under subtitle C that is subject to final approval by the EPA Administrator.

**AMENDMENT:** A motion by Mrs. Rodgers to order H.R. 1070 favorably reported to the House, as amended.

**DISPOSITION:** **AGREED TO**, by a roll call vote of 27 yeas and 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson				Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis				Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier			
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

03/09/2023

## OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND  
TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1070 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to increase American energy production and restore energy leadership by amending the Solid Waste Disposal Act to provide the owner or operator of a critical energy resource facility an interim permit, under Subtitle C of such Act, that is subject to final approval by the Administrator of the Environmental Protection Agency or a State with primary enforcement responsibility.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1070 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

## RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII:

(1) the following hearing was used to develop or consider H.R. 1070:

On January 31, 2023, the Committee on Energy and Commerce held an oversight hearing, entitled: “American Energy Expansion: Strengthening Economic, Environmental, and National Security”. The Committee received testimony from:

- The Honorable Paul Dabbar, Former U.S. Undersecretary of Energy, Department of Energy.
- Donna Jackson, Director of Membership Development, National Center for Public Policy Research, Project 21.
- Robert McNally, President, Rapidan Energy Group; and

- Ana Unruh Cohen, Ph.D., Former Staff Director, U.S. House Select Committee on the Climate Crisis.

(2) The following related hearings were held:

On February 7, 2023, the Subcommittees on Environment, Manufacturing, and Critical Materials and Energy, Climate, and Grid Security jointly held a hearing on 17 separate pieces of legislation, including H.R. 1070. The Subcommittee received testimony from:

- The Honorable Mark Menezes, Former U.S. Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On September 16, 2020; the Subcommittee on Environment held a hearing entitled, “Building a 100 Percent Clean Economy: Opportunities for an Equitable, Low-Carbon Recovery.” The witnesses included:

- Lonnie R. Stephenson, International President, International Brotherhood of Electrical Workers;
- Denise Fairchild, Ph.D., President & Chief Executive Officer, Emerald Cities Collaborative; and
- Michelle Michot Foss, Ph.D., Fellow in Energy & Minerals, Baker Institute for Public Policy, Center for Energy Studies, Rice University.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

#### EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1070 contains no earmarks, limited tax benefits, or limited tariff benefits.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H.R. 1070 contains one section with two distinct amendments to section 3005(e) of the Solid Waste Disposal Act, related to the creation of Interim status RCRA Subtitle C permits.

First, section 1 adds critical energy resource facilities to the list of those facilities treated as having been issued a RCRA interim status permit until (1) the final administrative disposition of their permit application or (2) a legal demonstration that the owner or operator failed to provide information needed to process their permit application.

Second, section 1 adds definitions of “critical energy resource” and “critical energy resource facility”. Section 1 defines a “critical energy resource” as any energy resource that, as determined by the Secretary of Energy, is essential to the energy sector and energy systems of the United States and whose supply chain is vulnerable to disruption. The Committee intends this definition to be interpreted broadly and points to the word “any” as proof of this desire. This designation is not limited to the use of one kind of fuel but instead includes all types of fuels that are important to our nation’s energy sector and system and that might be vulnerable to disruption. Moreover, this designation is purposely the domain of the Secretary of Energy—not the Secretary of Interior or Environmental Protection Agency—who has been given statutory responsibility of and care for the energy sector and systems of the United States. The definition of “critical energy resource facility” is defined to be a facility that processes or refines a critical energy resource. This definition, too, is not limited to the use of one kind of fuel or manufacturing practice but instead to provide the greatest number of permit compliant options that might address our nation’s energy sector and system and that might be vulnerable to disruption.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, this section was not made available to the Committee in time for the filing of this report.

## MINORITY VIEWS

We oppose H.R. 1070, which amends the Solid Waste Disposal Act (SWDA) to provide the owner or operator of a critical energy resource facility an interim permit under Subtitle C that is subject to final approval by the Administrator of the Environmental Protection Agency, and for other purposes. The bill would create temporary waivers for vaguely defined “critical energy resource facilities”, creating a giant loophole for any industry that claims to be working on critical energy resources, allowing such industry to mismanage its waste and get a temporary permit to do so.

### BACKGROUND

The SWDA of 1965 was amended by the Resource Conservation and Recovery Act (RCRA) which is what is more commonly used to describe the law governing the disposal of solid and hazardous waste. RCRA set national goals for protecting human health and the environment from the potential hazards of waste disposal, conserving energy and natural resources, reducing the amount of waste generated, and ensuring that wastes are managed in an environmentally-sound manner.<sup>1</sup> Subtitle C established the “cradle to grave” system for controlling hazardous waste from the time it is generated until it is ultimately disposed. Permits are a critical component of the cradle to grave system and follow the principle of cooperative federalism. While EPA is tasked with setting minimum federal standards, authorized states implement and enforce those standards and issue relevant permits.

Like many of the bills under consideration by the Committee, H.R. 1070 is an overly broad solution in search of a problem. The author of this bill stated that critical energy resource facilities are being bogged down by the lengthy permitting process for RCRA permits, often taking many years to secure, delaying the process for developing critical resources.<sup>2</sup> To date, the Majority has not been able to substantiate such claims. In fact, energy generators do not usually apply for RCRA permits, but rather ship their waste to RCRA certified sites to manage the waste. Furthermore, RCRA already includes short term timelines for on-site waste storage for both small and large quantity hazardous waste generators. Small quantity generators are allowed to hold waste on-site for up to 180 days (or 270 if the shipping distance is greater than 200 miles) and large quantity generators are allowed to hold waste on-site for up

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<sup>1</sup>Environmental Protection Agency, *EPA History: Resource Conservation and Recovery Act* ([www.epa.gov/history/epa-history-resource-conservation-and-recovery-act#:~:text=The%20Resource%20Conservation%20and%20Recovery,of%20municipal%20and%20industrial%20waste](http://www.epa.gov/history/epa-history-resource-conservation-and-recovery-act#:~:text=The%20Resource%20Conservation%20and%20Recovery,of%20municipal%20and%20industrial%20waste)) (accessed Mar. 21, 2023).

<sup>2</sup>House Committee on Energy and Commerce, Statement of Representative Buddy Carter, *Markup of Seven Bills*, 118th Cong. (Feb. 28, 2023).

to 90 days.<sup>3</sup> These flexible short-term options allow many generators to ship waste to an appropriate facility before ever needing a RCRA permit.

In addition, concerns that RCRA permits are delaying the mining and processing of critical minerals, are also misplaced. For over 40 years, wastes from the extraction, beneficiation, and processing of ores and minerals have been exempted from Subtitle C of RCRA.<sup>4</sup>

#### SUMMARY OF H.R. 1070

Section 1 of H.R. 1070 amends Section 3005(e) of the SWDA to grant interim permits to so-called critical energy resource facilities, and adds vague definitions of “critical energy resource” and “critical energy resource facility” to the statute.

Despite EPA administering the SWDA, the bill defines “critical energy resource” as “. . . any energy resource that is essential to the energy sector and energy systems of the United States, and the supply chain of which is vulnerable to disruption,” as determined by the Secretary of Energy. The bill does not define, provide parameters, or metrics for the Secretary to use in making such determinations, essentially allowing the Secretary to deem almost anything a “critical energy resource,” “essential to the energy sector and energy system of the United States,” and “vulnerable to supply chain disruptions.” The bill fails to include any public review, or accountability measures related to the Secretary’s determinations. And putting the Secretary of Energy in charge of determining which environmental permits EPA and states are allowed to require, sets a troubling precedent.

Due to the all-encompassing definition of “critical energy resource,” essentially any category of industrial facility could be considered critical and would be exempt from required permits for treatment, storage, and disposal of hazardous waste. Based on these definitions, wastes from the following manufacturing and industrial processes could benefit from the legislation’s regulatory loophole: spent solvent wastes, electroplating and other metal finishing wastes, dioxin-bearing wastes, chlorinated aliphatic hydrocarbons production, wood preserving wastes, petroleum refinery wastewater treatment sludges, multisource leachate, wood preservation, organic chemicals manufacturing, pesticides manufacturing, petroleum refining, veterinary pharmaceuticals manufacturing, inorganic pigment manufacturing, inorganic chemicals manufacturing, explosives manufacturing, iron and steel production, primary aluminum production, secondary lead processing, ink formulation, and coking (processing of coal to produce coke).<sup>5</sup> Furthermore, any facility that processes these hazardous wastes—like solid waste incinerators—could be exempted from required permits for hazardous waste treatment, storage, and disposal under RCRA.

Since H.R. 1070 grants the Secretary of Energy enormous latitude to determine what qualifies as a critical energy resource, the aforementioned list demonstrates the wide range of hazardous

<sup>3</sup> Environmental Protection Agency, *Categories of Hazardous Waste Generators* ([www.epa.gov/hwgenerators/categories-hazardous-waste-generators](http://www.epa.gov/hwgenerators/categories-hazardous-waste-generators)) (accessed Mar. 21, 2023).

<sup>4</sup> Environmental Protection Agency, *Special Wastes* ([www.epa.gov/hw/special-wastes](http://www.epa.gov/hw/special-wastes)) (accessed Mar. 21, 2023).

<sup>5</sup> 40 CFR § 261.31; 40 CFR § 261.32.

waste categories that could be granted interim operating permits without appropriate RCRA safeguards.

CONCLUSION

Despite the Majority's claims that RCRA permitting is holding up critical energy resource development, this bill is nothing more than a solution in search of a problem. The RCRA program is an example of cooperative federalism at work, with flexible timelines, state led programs, and clear guidelines for applying for and receiving permits. At best, this is a misguided bill, misunderstanding how our country manages hazardous waste, but at worst it represents an abandonment of our federal responsibility to safely manage hazardous waste to protect public health and safety.

For the reasons stated above, we dissent from the views contained in the Committee's report.

FRANK PALLONE, Jr.,

*Ranking Member Committee on Energy and Commerce.*

